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FEDERAL COMMUNICATIONS COMMISSION  
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JUN 29 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 19 of the  
Cable Television Consumer Protection  
and Competition Act of 1992

Annual Assessment of the Status of  
Competition in the Market for the  
Delivery of Video Programming

CS Docket No. 94-48

COMMENTS OF LIBERTY MEDIA CORPORATION  
IN RESPONSE TO NOTICE OF INQUIRY

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## SUMMARY

Since enactment of the 1992 Cable Act, competition has continued to increase among multichannel video programming distributors. Although Liberty Media has not attempted to identify those franchise areas subject to "effective competition," the launch last week and national roll-out later this year of the USSB and DIRECTV high-power DBS services will increase such competition in franchise areas throughout the country. Moreover, C-Band TVRO program services also are "available" nationally and provide additional competition.

In response to the Commission's requests, Liberty Media has provided specific information regarding its ownership interests in cable television operators and programmers, as well as changes in such ownership interests. It also has provided the information requested regarding its Board of Directors.

To implement the 1992 Cable Act, the Commission has adopted numerous regulations affecting virtually every aspect of the businesses of cable operators and programmers. Because of the number of implementing regulations, their overlapping impact, and changes in key regulatory provisions, it is difficult to isolate and to assess the precise impact of particular regulatory provisions. Therefore, the Commission should refrain from drawing definitive conclusions now regarding the consequences of specific regulations. However, Liberty Media believes that several of the provisions may adversely affect the quality and diversity of programming services.

The Commission's implementing regulations include numerous burdensome reporting requirements, particularly for cable operators. Liberty Media respectfully submits that the Commission largely can obtain the information required for its annual assessments from public reports and should not impose additional reporting requirements.

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IN RESPONSE TO NOTICE OF INQUIRY

Liberty Media Corporation ("Liberty Media") submits these comments in response to the Notice of Inquiry, CS Docket No. 94-48, FCC 94-119 (rel. May 19, 1994) ("Notice"), in this proceeding. Liberty Media provides specific information regarding its ownership interests in cable operators and programmers and any changes therein and responds generally to additional issues of interest to the Commission.

I. Status Of Competition Among Multichannel Video Programming Distributors.

Liberty Media believes that competition has continued to increase among multichannel video programming distributors. In addition to the provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") and the Commission's implementing regulations designed to encourage the growth of such competition, the Commission has identified in its Notice several other regula-

tory initiatives to promote additional MMDS and LMDS wireless cable services, as well as video dialtone services. See Notice at ¶¶22-23, 26-27, 42-43. However, Liberty Media has not attempted to identify and quantify those local franchise areas in which "effective competition" is present pursuant to 47 C.F.R. §76.905.

Significant developments have occurred in the level of competition afforded by DBS operators and TVRO (HSD) program packagers. United States Satellite Broadcasting, Inc. ("USSB") and DIRECTV, Inc. ("DIRECTV") initiated high-power DBS service in Jackson, Mississippi and Shreveport, Louisiana on June 17 and June 21, respectively. According to the DBS operators, their services were "off to a flying start" in these initial markets. K. Gibbons, "DBS Companies Report Strong Sales at Launch," Multichannel News, June 27, 1994, at 4. Three additional cities are to be added this week, and seven more within the next month, with a nationwide roll-out beginning in late August or early September. Id.

Clearly, the present packages of programming services and the a-la-carte and pay-per-view services offered by USSB and DIRECTV are "comparable" to the services typically offered by cable operators.<sup>1</sup> The USSB line-up of services

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<sup>1</sup> In addition to the USSB and DIRECTV DBS services, Primestar Partners L.P. ("Primestar") presently provides the following services to approximately 70,000 subscribers through medium-power DBS: C-SPAN; CNN; CNN Headline News; The Cartoon Network; Cinemax (MultiChannel); Country Music Television; The Discovery Channel; The Disney Channel; Encore; The Family

includes the following: All News Channel; Cinemax (Multi-Channel); Comedy Central; FLIX; HBO (MultiChannel); Lifetime; The Movie Channel; MTV; Nick at Nite; Nickelodeon; Showtime and Showtime 2; and VH-1. DIRECTV's even more extensive line-up includes the following: A&E; Bloomberg Direct; C-SPAN and C-SPAN2; CNBC; CNN; CNN International; Cartoon Network; Country Music Television; Court TV; The Discovery Channel; the Disney Channel; E! Entertainment Television; ESPN; The Family Channel; The Golf Channel; Headline News; The Learning Channel; MuchMusic; Music Choice; The Nashville Network; Newsworld International; PrimeTime 24 (ABC, CBS and NBC in "white areas"); Sci-Fi Channel; Superstation WTBS; The Travel Channel; Trio; Turner Network Television; USA Network; The Weather Channel; and numerous pay-per-view channels.

In addition to the launch of these DBS services, C-Band TVRO program packagers continue to experience substantial growth. Nearly 150,000 new C-Band TVRO dishes were sold in the United States during the first five months of 1994, a 20 percent increase over 1993 sales for a comparable period. J. Goodger, "C-BAND Continues to Ride Big Sales Wave," Satel-

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Channel; HBO (MultiChannel); The Learning Channel; The Nashville Network; The PreVue Guide; Prime Network; Superstation WTBS; Turner Network Television; TV Japan; USA Network; Networks in white areas (ABC, CBS, NBC, Fox and PBS); and five audio services. Primestar also has announced an aggressive national marketing program. C. McConnell, "Primestar Begins TV Ad Blitz," Broadcasting & Cable, June 20, 1994, at 14.

lite Business News, June 15, 1994, at 1, 29. Total U.S. TVRO dish sales have exceeded 3.75 million units. Id. According to the Satellite Broadcasting and Communications Association ("SBCA"), over 4.35 million TVRO dishes had been shipped as of December 31, 1993. SBCA Satellite System -- Shipment Statistics (March 15, 1994). As Liberty Media demonstrated in its Reply Comments in MM Docket No. 92-265 filed on February 16, 1993 at 11-14 and Exhibit 1, TVRO programming packagers offer a wide variety of programming services at competitive prices.

The Commission previously has recognized that these DBS services and TVRO packages will be deemed "technically available" in all households in all franchise areas covered by the "footprints" of DBS and C-Band services if such households are "reasonably aware" that the service is available in their area and zoning ordinances do not prohibit the necessary satellite dishes. Report and Order, MM Docket No. 92-266, 8 FCC Rcd. 5631 (1993), at ¶32. The required public "awareness may be accomplished through any sort of local, regional or national media, provided that such media reach the community...." Id. Thus, after their national roll-out and associated national publicity, the USSB, DIRECTV and Prime-star services will be technically available in virtually all communities and the TVRO programming packages already are "available."

As set forth above, the programming services offered by these DBS operators and TVRO program packagers clearly are



"comparable" to the programming typically offered by cable operators. If the retail prices of such services also are comparable to "competitive" prices, such services arguably will provide "effective competition" regardless of their combined penetration level in a particular franchise community. Consequently, the Commission should review the competitive conditions resulting from the services offered by national and local multichannel video programming distributors to determine whether the 15 percent penetration criterion is an excessive threshold for determining effective competition and make appropriate legislative recommendations to Congress.

## II. Status Of And Changes In Ownership Interests In Cable Operators And Programmers.

Liberty Media has ownership interests, virtually all of which are non-controlling, in a number of partnerships and corporations which operate cable television systems serving approximately 3.2 million subscribers. Liberty Media also has substantial ownership interests in a number of national and regional programming services and in a satellite broadcast programming vendor and a national information service.

On January 27, 1994, Liberty Media and Tele-Communications, Inc. ("TCI") entered into a definitive merger agreement. Under that agreement, the merger transaction will be structured as a tax-free exchange of the shares of the common and preferred stock of Liberty Media and of TCI's common stock for like shares of TCI/Liberty Holding Company, a

newly-formed holding company. The transaction is subject to the approval of the shareholders of Liberty Media and TCI, as well as various regulatory approvals and other customary conditions. It is anticipated that, after the receipt of all necessary approvals, the transaction will close during 1994.

In response to the Commission's requests for information in the Notice at ¶60, Liberty Media separately identifies each of the cable and programming entities in which it has an ownership interest and states the specific nature of that interest. Liberty Media also provides the additional information requested regarding members of its Board of Directors, minority-controlled entities, and changes in ownership interests.

- (a) *the number of subscribers to cable systems in which each MSO has any interest, reporting separately for systems in which the MSO has both a controlling and non-controlling interest;*

Liberty Media has direct or indirect ownership interests in the following cable television systems as of March 15, 1994. The basic subscriber information included in the table is current as of December 31, 1993 and represents 100 percent of the subscribers for each of the listed entities.

<u>Cable Subsidiaries</u>	<u>Basic Subscribers</u>	<u>Ownership Interest</u>
Community Cable Television ("CCT")	127,520	50.001% general partner
Command Cable of Eastern Illinois Limited Partnership	7,768	75% limited partner
US Cable of Paterson	23,290	50.1% general partner
US Cable of Allamuchy, L.P.	1,277	1% general partner, 49% indirect limited partner
	<hr/> 159,855	

<u>Cable Affiliates</u>	<u>Basic Subscribers</u>	<u>Ownership Interest</u>
Columbia Associates, L.P. ("Columbia LP")	181,667	39.6% general partner
Columbia Cable of Oregon	68,075	14.3% general partner, 31.7% indirect general partnership interest via Columbia LP
Garden State Cable TV ("Garden State")	192,222	20% indirect limited partner
Kansas City Cable Partners	188,793	50% general partner
Lenfest Communications, Inc. ("Lenfest")	550,703	50% common stock
Sioux Falls Cable Television	35,774	50% general partner
Susquehanna Broadcasting Cable Division ("Susquehanna")	122,740	15% indirect common stock
TCI TKR Limited Partnership ("TCI-TKR")	828,346	15% indirect limited partner
TKR Cable Company	335,363	50% general partner
US Cable of Evangola	8,825	48.75% general partner, 1.25% limited partner

US Cable of Lake County	91,853	10% general partner, 40% limited partner
US Cable of Northern Indiana	75,701	11% general partner, 39% limited partner
US Cable of Tri-County	8,897	49.25% general partner, 0.75% limited partner
	<hr/>	
	2,688,959	

<u>Cable Investments</u>	<u>Basic Subscribers</u>	<u>Ownership Interest</u>
Intermedia Partners ("Intermedia")	295,738	6.37% limited partner
Mark Twain Cablevision	<u>24,690</u>	24.75% limited partner
	320,428	
Aggregate subscribers served by the Liberty Media's Cable Subsidiaries, Cable Affiliates and Cable Investments	<u>3,169,242</u>	

(b) *the number and identity of cable programming services (exclusive of local origination channels) in which MSOs have an ownership interest;*

Liberty Media has direct or indirect ownership interests in the programming entities identified below. The programming services listed after each entity include those that are produced by that entity or are produced by entities in which the named entity has an ownership interest. This information is current as of March 15, 1994.

<u>Programming Subsidiaries</u>	<u>Programming Service</u>	<u>Ownership Interest</u>
Encore Media Corporation	Encore Starz!	90% common stock

<u>Programming Affiliates</u>	<u>Programming Service</u>	<u>Ownership Interest</u>
American Movie Classics Company	American Movie Classics	50% general partner <sup>2</sup>
BET Holdings, Inc.	BET Cable Network BET Action Pay-Per-View	18% common stock
Video Jukebox Network, Inc.	The Box	7% common stock <sup>3</sup>
Courtroom Television Network	Court TV	33% general partner
International Family Entertainment, Inc.	The Family Channel Cable Health Club	18% common stock (after conversion)
Prime SportsChannel Networks Associates	Prime Network SportsChannel America/ NewSport	38% indirect general partner
<u>Home Shopping Services</u>	<u>Programming Service</u>	<u>Ownership Interest</u>
Home Shopping Network, Inc.	HSN I, HSN II, HSN Spree	39.3% common stock (79% voting control)
QVC, Inc.	QVC Network, Q2	18.5% of QVC common equity

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<sup>2</sup> In September 1993, Liberty Media received notice from Rainbow Program Enterprises ("Rainbow") that Rainbow had elected to purchase Liberty Media's 50 percent partnership interest in American Movie Classics Company ("AMC") under the terms of a buy/sell provision in the AMC partnership agreement. Liberty Media and Rainbow have agreed to postpone the closing of the sale until June 30, 1994. Liberty Media and Rainbow are discussing other possible transactions which, if consummated, may result in their amending or terminating the sale by Liberty Media of its AMC partnership interest.

<sup>3</sup> Lenfest Communications, Inc., in which Liberty Media has an ownership interest, also indirectly holds a 50 percent interest in a joint venture with voting control of Video Jukebox Network, Inc.

<u>Other</u>	<u>Programming Service</u>	<u>Ownership Interest</u>
Southern Satellite Systems, Inc.	SuperStation distribution of WTBS signal	100% common stock
X*PRESS Information Services Ltd.	X*PRESS Executive X*PRESS X*CHANGE Cable in the Classroom	100% general and limited partner

#### Regional Programming Services

Liberty Media also has controlling interests in five regional sports programming services and has ownership interests in eight other regional sports programming services.

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On April 25, 1994, Liberty Media and Reebok International Ltd. signed a letter of intent to acquire minority equity interests in Cable Health TV, Inc., a subsidiary of International Family Entertainment, Inc. Body By Jake, Inc. also has a minority ownership interest in Cable Health TV, Inc., which provides the Cable Health Club programming service devoted to health and fitness programming.

- (c) *the names and board affiliations of all of the MSOs' board members who also serve on the boards of other cable, broadcast, program production, or other communications companies (including telecommunications companies);*

The members of Liberty Media's Board of Directors and their other directorships in public companies are set forth below.

<u>Name</u>	<u>Other Directorships</u>
Peter R. Barton	BET Holdings, Inc. Turner Broadcasting System, Inc.
Paul A. Gould	National Patent Development Corporation
Robert L. Johnson	BET Holdings, Inc. Hilton Hotels Corporation
H. F. Lenfest	Lenfest Communications, Inc. Video Jukebox Network, Inc. Telvue Corporation
Bob Magness	Tele-Communications, Inc. Turner Broadcasting System, Inc. Republic Pictures Corporation
John C. Malone	Tele-Communications, Inc. Turner Broadcasting System, Inc. The Bank of New York Company, Inc. BET Holdings, Inc.
David E. Rapley	none
J. David Wargo	none

(d) *the identity of all minority-owned and minority-controlled MSOs and cable programming services; and*

Liberty Media has ownership interests in Mile-Hi Cable Partners, L.P. and in BET Holdings, Inc., which are minority controlled. Mile-Hi provides cable service to approximately 93,000 basic subscribers in the Denver area. BET Holdings, Inc. provides the BET Cable Network and BET Action Pay-Per-View services.

- (e) *the identity of the MSOs that hold interests in cable programming services, a description of the amount and type of such interests, and the date on which the interest was acquired, identifying, in particular, any changes that have occurred since passage of the 1992 Cable Act.*

Liberty Media has identified its ownership interests in cable programming services in response to Subpart (b). Its interests have changed during the past year as follows:

- Minority interests in Video Jukebox Network, Inc. and QVC, Inc. decreased from 11 percent and 30 percent (beneficial interest) to 7 percent and 18.5 percent, respectively.
- Minority interest in International Family Entertainment, Inc. increased from 15 percent to 18 percent.
- Interest in Home Shopping Network, Inc. increased from 24 percent of the common stock (65.6 percent voting control) to 39.3 percent of the common stock (79 percent voting control).

**III. Changes In Practices And Conduct Of Multichannel Video Programming Vendors And Distributors Since Passage Of The 1992 Cable Act.**

Since the 1992 Cable Act was enacted into law, the Commission has adopted numerous implementing regulations affecting virtually every aspect of the businesses of cable operators and programmers. Moreover, the Commission in response to petitions for reconsideration substantially has revised its rate regulations (which, in turn, have required extensive and detailed implementation efforts by cable operators) and continues to reconsider other important provisions of its implementing regulations. Thus, because of the number



of implementing regulations, their overlapping impact, and changes in key regulatory provisions, it is difficult to isolate and to assess the precise impact of particular regulatory provisions.

Nonetheless, in response to the Commission's request for information regarding the impact upon programming services of the "interplay" of "various structural and conduct regulations" (Notice at ¶63), Liberty Media offers the following preliminary conclusions:

- Liberty Media believes that the Commission's must-carry and retransmission consent regulations may adversely affect the ability of those programming services in which it has an ownership interest to obtain carriage on cable systems with limited channel capacity. To the extent that carriage is thereby limited, the subscriber and advertising revenues available to those programming services also will be limited.
- The channel occupancy rules adopted by the Commission may limit carriage of programming services in which Liberty Media has an ownership interest on certain systems of cable operators in which Liberty Media and/or TCI have ownership interests. Further, because of the low attribution standard adopted by the Commission and programming investments by other cable operators in such services, their carriage may be limited on certain other cable systems. Depending upon the impact of the Commission's rate regulations on cable system rebuild and expansion activities, such limits also may impair investments in and the development of new programming services.
- The comprehensive system of rate regulation adopted by the Commission, including its regulation of changes in rates when programming services are added to regulated service tiers, may adversely affect the programming services in which Liberty Media has an owner-

ship interest by limiting the carriage of such services and the ability and willingness of cable operators to pay the rights fees for such carriage.<sup>4</sup>

Depending upon the Commission's decisions on reconsideration and the impact of the Commission's rate regulations on cable operator decisions to add programming services and to upgrade and rebuild cable plant, the Commission's implementing regulations could have a further significant adverse impact on programming services.

#### IV. Collection Of Data For Future Reports.

As a result of the Commission's implementing regulations, cable operators in particular have been overwhelmed with an unending and changing stream of reporting requirements. Liberty Media respectfully submits that further reports will only compound an already difficult situation which appears to have immobilized the decision-making process of numerous cable operators.

Instead, the Commission largely can obtain the information required for its annual assessments from public reports. For example, with the exception of its proposed investment in Cable Health TV, Inc., the information regarding

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<sup>4</sup> Liberty Media sets forth in detail the adverse impact of the Commission's "going-forward" rate regulations on programming services in its Comments filed today in MM Docket 92-266 and will address the potentially adverse impact of the Commission's proposal to revise the cable affiliated transaction rules on vertical integration in comments to be filed on July 1 in MM Docket 93-215.

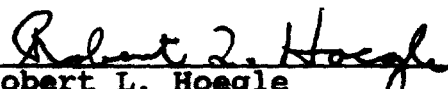
Liberty Media's ownership interests in cable operators and programmers set forth supra at 5-10, as well as its Board of Directors, is available in Liberty Media's Form 10-K report for the year ended December 31, 1993. Changes in such ownership interests are readily discernible from reports for prior years, and ongoing material events are reported in Form 10-Q and 8-K reports. Of course, the Commission will have information regarding all formal complaints under Sections 12 and 19 of the 1992 Cable Act in its own files.

#### Conclusion

Liberty Media respectfully submits that, because of the multiplicity of overlapping Commission regulations and changes therein, the Commission should refrain from drawing definitive conclusions now regarding the specific impacts of particular implementing regulations or establishing a final framework for future assessments. Pending review of the adequacy of publicly available materials, the Commission should not adopt additional reporting requirements.

June 29, 1994

Respectfully submitted,

  
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